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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JESSICA T., et al.,

Persons Coming Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSIE T.,

Defendant and Appellant.

B173946

(Los Angeles County

Super. Ct. No. CK22950)

APPEAL from a judgment of the Superior Court of Los Angeles County, Steven L. Berman, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Larry Cory, Assistant County Counsel, and Frank DaVanzo, Principal Deputy County Counsel, for Plaintiff and Respondent.

Jessie T. (Mother) is the mother of Lydia (born June 1987). She appeals from the orders of the juvenile court removing Lydia from her custody, and denying her reunification services. We affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has three other children besides Lydia: Jessica T. (born April 1986), David M. (born May 1990) and Ebony T. (born August 1994). Lydia's father, Hugh T., lives out-of-state and is not a party to these proceedings. The family came to the attention of the Department of Children and Family services (the Department) in 1996 after allegations that Mother had been physically abusing the children and that Dwight T., Ebony's father, had sexually abused Jessica. The children were removed from Mother's custody but Mother complied with the case plan and the children were returned to her and the Department's jurisdiction terminated in 1998. In 2002, the children again reported that Mother had physically abused them. When confronted with the allegations, Mother said the children were lying. Later she admitted to hitting the children. The Department filed a petition on May 22, 2002, pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), (d), and (j).¹ The petition was sustained on October 15, 2002, and the court removed custody of the children from Mother pursuant to section 361, subdivision (c). The court ordered reunification services for Mother with respect to David and Ebony only, but not for Jessica and Lydia.

¹

All further statutory references shall be to the Welfare and Institutions Code.

Mother appealed the order denying reunification services as to Jessica and Lydia. On June 25, 2003, we filed an opinion, affirming the juvenile court's denial of family reunification services.²

Lydia remained in foster care until September 29, 2003, when she called the social worker and said she had decided to return to Mother's home. The social worker allowed Lydia to stay temporarily with Mother while requesting a change of placement order. On October 23, 2003, Lydia (then 16) was hospitalized after passing out at school. She was diagnosed with anemia, and while she was at the hospital, Mother came to visit and caused such a scene with hospital personnel that she was escorted out by security guards. Lydia then became withdrawn and refused to talk or eat. Her psychiatrist was of the opinion that Lydia should not return to Mother's home. When Lydia was discharged from the hospital, she requested to go to a foster home.

Unfortunately, while Lydia was hospitalized, on October 23rd, the court ordered Lydia placed with Mother based upon her prior request.

Subsequently, the Department filed a supplemental petition pursuant to section 387 on November 3, 2003. The court gave the Department the discretion to place Lydia with any appropriate relative and continued the matter to December 15, 2003.

The social worker's report prepared for the December 15th hearing indicated that Lydia liked her new foster home and was not ready to return to Mother's home. The social worker recommended that Lydia have unmonitored contact with her family. The matter was continued for trial.

In January 2004, the social worker reported that Lydia had regular visits with her family and now wished to return to them. But in March 2004, the

² We granted a request to take judicial notice of this opinion on August 31, 2004.

social worker reported that Lydia had had a bad visit with Mother and no longer wanted to return. Apparently, when Lydia and Jessica refused to go to church with Mother, Mother called the police. The social worker also reported Mother's counselor had written a letter indicating that Mother was not consistently going to counseling, and that Mother appeared "overwhelmed and distraught."

On March 17, 2004, the date set for the adjudication of the section 387 petition, the case was called and Mother's counsel stated that his client was not present and was unable to proceed with a defense. The court sustained the petition of Lydia and Jessica based on the social worker's report and placed them both in long-term foster care. Mother appeared about an hour after the matter had been called and the court proceeded to make orders regarding Ebony and David.

Mother appeals, contending that the evidence was insufficient to support a true finding on the section 387 supplemental petition and that the court erred in removing Lydia from Mother's custody and in denying reunification services to Mother.

DISCUSSION

1. Sufficiency of the Evidence

Section 387 provides: "An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition. [¶] (a) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition *has not been effective in the rehabilitation or protection of the child* or, in the case of placement with a relative,

sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.” (Italics added.)

Mother contends that there was insufficient evidence that Lydia was at risk of harm in her custody, citing Lydia’s wish to return home and her positive visitation. Mother argues that Lydia only preferred foster care because there was less discipline there. Next, Mother argues that there was no clear and convincing evidence of physical or emotional abuse to support the order removing Lydia from Mother’s care. Mother claims that they have a typical teenager/parent relationship which is not enough to warrant removal.

Mother’s assertions might have merit were there nothing else in the record. Here, however, there is ample evidence to demonstrate that Mother was emotionally volatile and unable to appropriately discipline Lydia, to the point where she was threatening Lydia’s emotional well-being. The record is undisputed that Mother’s visit with Lydia at the hospital was so disruptive that the hospital caused her to leave and thereafter Lydia sunk into a deep depression. Every time Lydia returned home, there was an incident which caused Lydia to be upset enough to want to go return a foster home. In addition, Mother was unwilling to admit that she needed help in dealing with Lydia, by failing to attend counseling sessions, and denying to the social worker that she had been at fault at the hospital. We find sufficient evidence to sustaining the section 387 petition and to support the order removing custody of Lydia.

2. Denial of Reunification Services

Mother also contends the court erred in denying reunification services for her and Lydia. Despite the fact that there was a prior order denying services which was upheld on appeal, Mother contends that circumstances have changed over time warranting a new order allowing reunification services. She argues that

since then, she had completed years of classes and counseling, and obtained housing and employment, and furthermore, that Lydia had expressed a desire to contact her.

Mother did not file a section 388 petition demonstrating a change of circumstances, nor was it shown that there was any change of circumstances. Mother's version of the facts is not supported by the record. She and Lydia did not get along at all when they were together, indeed, she seemed to exacerbate Lydia's depression. Moreover, Mother was not consistent in attending counseling. The case had been pending for almost two years, and there is no evidence that reunification services would benefit Lydia, especially in light of the fact that she was almost 18. We find the order denying reunification services was proper. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 166-167.)

DISPOSITION

The orders of the juvenile court are affirmed.

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HASTINGS, J.

We concur:

EPSTEIN, P.J.

CURRY, J.